

SENATE BILL NO. 152

INTRODUCED BY COCCHIARELLA

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE QUALIFICATIONS, PROCEDURES, AND FEES FOR OBTAINING SPECIAL PERMITS TO SELL BEER AND TABLE WINE; DEFINING "SPECIAL EVENT"; REVISING CATERING REQUIREMENTS; ~~AND~~ AMENDING SECTIONS 16-1-106, 16-4-111, 16-4-204, 16-4-301, AND 16-4-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 16-1-106, MCA, is amended to read:

"16-1-106. Definitions. As used in this code, the following definitions apply:

(1) "Agency franchise agreement" means an agreement between the department and a person appointed to sell liquor and table wine as a commission merchant rather than as an employee.

(2) "Agency liquor store" means a store operated under an agency franchise agreement in accordance with this code for the purpose of selling liquor at either the posted or retail price for off-premises consumption.

(3) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(4) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.

(5) "Beer" means a malt beverage containing not more than 7% of alcohol by weight.

(6) "Beer importer" means a person other than a brewer who imports malt beverages.

(7) "Brewer" means a person who produces malt beverages.

(8) "Community" means:

(a) in an incorporated city or town, the area within the incorporated city or town boundaries;

(b) in an unincorporated city or area, the area identified by the federal bureau of the census as a community for census purposes; and

(c) in a consolidated local government, the area of the consolidated local government not otherwise incorporated.

(9) "Department" means the department of revenue, unless otherwise specified.

1 (10) "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the juices
2 of apples or pears and that contains not less than 0.5% alcohol by volume and not more than 6.9% alcohol by
3 volume, including but not limited to flavored, sparkling, or carbonated cider.

4 (11) "Immediate family" means a spouse, dependent children, or dependent parents.

5 (12) "Import" means to transfer beer or table wine from outside the state of Montana into the state of
6 Montana.

7 (13) "Liquor" means an alcoholic beverage except beer and table wine.

8 (14) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction,
9 or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their
10 products and with or without other malted cereals and with or without the addition of unmalted or prepared
11 cereals, other carbohydrates, or products prepared from carbohydrates and with or without other wholesome
12 products suitable for human food consumption.

13 (15) "Package" means a container or receptacle used for holding an alcoholic beverage.

14 (16) "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses as
15 fixed and determined by the department and in addition an excise and license tax as provided in this code.

16 (17) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains
17 50% of alcohol by volume.

18 (18) "Public place" means a place, building, or conveyance to which the public has or may be permitted
19 to have access and any place of public resort.

20 (19) "Retail price" means the price established by an agent for the sale of liquor to persons who do not
21 hold liquor licenses. The retail price may not be less than the department's posted price.

22 (20) "Rules" means rules adopted by the department or the department of justice pursuant to this code.

23 (21) "Special event", as it relates to an application for a beer and wine special permit, means a short,
24 infrequent, out-of-the-ordinary occurrence, such as a picnic, fair, reception, or sporting contest.

25 ~~(24)~~(22) "State liquor warehouse" means a building owned or under control of the department for the
26 purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

27 ~~(22)~~(23) "Storage depot" means a building or structure owned or operated by a brewer at any point in
28 the state of Montana off and away from the premises of a brewery, which building or structure is equipped with
29 refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as
30 permitted by this code.

1 ~~(23)~~(24) "Subwarehouse" means a building or structure owned or operated by a licensed beer
2 wholesaler or table wine distributor, located at a site in Montana other than the site of the beer wholesaler's or
3 table wine distributor's warehouse or principal place of business, and used for the receiving, storage, and
4 distribution of beer or table wine as permitted by this code.

5 ~~(24)~~(25) "Table wine" means wine that contains not more than 16% alcohol by volume and includes
6 cider.

7 ~~(25)~~(26) "Table wine distributor" means a person importing into or purchasing in Montana table wine for
8 sale or resale to retailers licensed in Montana.

9 ~~(26)~~(27) "Warehouse" means a building or structure located in Montana that is owned or operated by
10 a licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table
11 wine as permitted by this code.

12 ~~(27)~~(28) "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation
13 of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur
14 in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24%
15 of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in
16 accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic
17 beverages not defined in this subsection but made in the manner of wine and labeled and sold as wine in
18 accordance with federal regulations are also wine."

19

20 **SECTION 2. SECTION 16-4-111, MCA, IS AMENDED TO READ:**

21 **"16-4-111. Catering endorsement for beer and wine licensees.** (1) (a) A person who is engaged
22 primarily in the business of providing meals with table service and who is licensed to sell beer at retail or beer
23 and wine at retail for on-premises consumption may, upon the approval of the department, be granted a catering
24 endorsement to the license to allow the catering and sale of beer or beer and wine to persons attending a special
25 event upon premises not otherwise licensed for the sale of beer or beer and wine for on-premises consumption.
26 The beer or wine must be consumed on the premises where the event is held.

27 (b) A person who is licensed pursuant to 16-4-420 to sell beer at retail or beer and wine at retail for
28 on-premises consumption may, upon the approval of the department, be granted a catering endorsement to the
29 license to allow the catering and sale of beer and wine to persons attending a special event upon premises not
30 otherwise licensed for the sale of beer or beer and wine, along with food equal in cost to 65% of the total gross

1 revenue from the catering contract, for on-premises consumption. The beer or wine must be consumed on the
2 premises where the event is held.

3 (2) A written application for a catering endorsement and an annual fee of \$200 must be submitted to
4 the department for its approval.

5 (3) A licensee who holds a catering endorsement may not cater an event in which the licensee is the
6 sponsor. The catered event must be within 100 miles of the licensee's regular place of business.

7 (4) The licensee shall notify the local law enforcement agency that has jurisdiction over the premises
8 that the catered event is to be held. A fee of \$35 must accompany the notice.

9 (5) The sale of beer or beer and wine pursuant to a catering endorsement is subject to the provisions
10 of 16-6-103.

11 (6) The sale of beer or beer and wine pursuant to a catering endorsement is subject to the provisions
12 of 16-3-306, unless entities named in 16-3-306 give their written approval for the on-premises sale of beer or
13 beer and wine on premises where the event is to be held.

14 (7) A catering endorsement issued for the purpose of selling and serving beer or beer and wine at a
15 special event conducted on the premises of a county fairground or public sports arena authorizes the licensee
16 to sell and serve beer or beer and wine in the grandstand and bleacher area of the premises, as well as from
17 a booth, stand, or other fixed place on the premises.

18 (8) A licensee may not share revenue from the sale of alcoholic beverages with the sponsor of the
19 catered event unless the sponsor is the state of Montana, a political subdivision of the state, or a qualified entity
20 under section 501(c) of the Internal Revenue Code, 26 U.S.C. 501(c), as amended."

21

22 **SECTION 3. SECTION 16-4-204, MCA, IS AMENDED TO READ:**

23 **"16-4-204. Transfer -- catering endorsement.** (1) (a) Except as provided in subsection (1)(b), a license
24 may be transferred to a new ownership and to a location outside the quota area for which it was originally issued
25 only when the following criteria are met:

26 (i) the total number of all-beverages licenses in the original quota area exceeded the quota for that area
27 by at least 25% in the most recent census prescribed in 16-4-502;

28 (ii) the total number of all-beverages licenses in the quota area to which the license would be transferred,
29 exclusive of those issued under 16-4-209(1)(a) and (1)(b), did not exceed that area's quota in the most recent
30 census prescribed in 16-4-502:

1 (A) by more than 33%; or

2 (B) in an incorporated city of more than 10,000 inhabitants and within a distance of 5 miles from its
3 corporate limits by more than 43%; and

4 (iii) the department finds, after a public hearing, that the public convenience and necessity would be
5 served by such a transfer.

6 (b) A license within an incorporated quota area may be transferred to a new ownership and to a new
7 unincorporated location within the same county on application to and with consent of the department when the
8 quota of the all-beverages licenses in the original quota area, exclusive of those issued under 16-4-209(1)(a)
9 and (1)(b), exceeds the quota for that area by at least 25% in the most recent census and will not fall below that
10 level because of the transfer.

11 (c) For 3 years after the transfer of a license between quota areas under subsection (1)(a), the license
12 may not be mortgaged or pledged as security and may not be transferred to another person except for a transfer
13 by inheritance upon the death of the licensee.

14 (d) Once a license is transferred to a new quota area under subsection (1)(a), it may not be transferred
15 to another quota area or back to the original quota area.

16 (e) A license issued under 16-4-209(1)(a) may not be transferred to a location outside the quota area
17 and the exterior boundaries of the Montana Indian reservation for which it was originally issued.

18 (2) (a) Any all-beverages licensee is, upon the approval and in the discretion of the department, entitled
19 to a catering endorsement to the licensee's all-beverages license to allow the catering and sale of alcoholic
20 beverages to persons attending a special event upon premises not otherwise licensed for the sale of alcoholic
21 beverages for on-premises consumption. The alcoholic beverages must be consumed on the premises where
22 the event is held.

23 (b) A written application for a catering endorsement and an annual fee of \$250 must be submitted to
24 the department for its approval.

25 (c) An all-beverages licensee who holds an endorsement granted under this subsection (2) may not
26 cater an event in which the licensee is the sponsor. The catered event must be within 100 miles of the licensee's
27 regular place of business.

28 (d) The licensee shall notify the local law enforcement agency that has jurisdiction over the premises
29 where the catered event is to be held. A fee of \$35 must accompany the notice.

30 (e) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of

1 16-6-103.

2 (f) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of
3 16-3-306, unless entities named in 16-3-306 give their written approval.

4 (g) A catering endorsement issued for the purpose of selling and serving beer at a special event
5 conducted on the premises of a county fairground or public sports arena authorizes the licensee to sell and serve
6 beer in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place
7 on the premises.

8 (h) A licensee may not share revenue from the sale of alcoholic beverages with the sponsor of the
9 catered event unless the sponsor is the state of Montana, a political subdivision of the state, or a qualified entity
10 under section 501(c) of the Internal Revenue Code, 26 U.S.C. 501(c), as amended."

11

12 **Section 4.** Section 16-4-301, MCA, is amended to read:

13 **"16-4-301. Special permits to sell all alcoholic beverages, beer, and table wine -- application and**
14 **issuance.** (1) (a) ~~Any association or corporation~~ An organization OR INSTITUTION that has a tax-exempt
15 designation under the provisions of section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), as
16 amended, or that is organized and operated to raise funds for a needy person, OR THAT IS AN ACCREDITED
17 MONTANA POSTSECONDARY SCHOOL and conducting a picnic, convention, fair, civic or community enterprise, or
18 sporting event is, in the discretion of the department, entitled to that conducts a special event may receive a
19 special permit to sell beer and table wine to the patrons of that special event, and except as provided in
20 subsection (1)(c), the beer and wine must be consumed within the enclosure in which the event is held. An
21 organization may receive up to three special permits a year.

22 (b) A civic league or organization that has a tax-exempt designation under section 501(c)(4) of the
23 Internal Revenue Code, 26 U.S.C. 501(c)(4), as amended, OR AN ORGANIZATION AUTHORIZED BY AN ACCREDITED
24 MONTANA POSTSECONDARY SCHOOL TO ENGAGE IN FUNDRAISING ACTIVITIES FOR INTERCOLLEGIATE ATHLETICS THAT HAS
25 A TAX-EXEMPT DESIGNATION UNDER THE PROVISIONS OF SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE, 26
26 U.S.C. 501(C)(3), AS AMENDED, may receive the number of UP TO 12 special permits A YEAR to sell beer and table
27 wine reasonably required to conduct its activities. FOR PURPOSES OF FUNDRAISING ACTIVITIES FOR INTERCOLLEGIATE
28 ATHLETICS, ONLY ONE ORGANIZATION FOR EACH MONTANA POSTSECONDARY SCHOOL MAY BE AUTHORIZED TO APPLY FOR
29 AND RECEIVE SPECIAL PERMITS UNDER THIS SECTION. All net earnings from the sale of beer and table wine must be
30 contributed to the state of Montana or a political subdivision of the state or must be devoted to purposes required

1 of entities under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), as amended.

2 (c) An association or corporation engaged in professional sporting contests or junior hockey contests
3 may receive one special permit to sell beer and table wine covering the entire season of play if:

4 (i) the association or corporation is sanctioned by a sports organization that regulates the specific sport;

5 (ii) the season of play of the sport is specified in advance;

6 (iii) an admission fee to the contests is charged; and

7 (iv) the contest events are held in facilities that provide seating for at least 1,000 patrons.

8 (D) A CHAMBER OF COMMERCE OR BUSINESS LEAGUE THAT HAS A TAX-EXEMPT DESIGNATION UNDER SECTION
9 501(C)(6) OF THE INTERNAL REVENUE CODE, 26 U.S.C. 501(C)(6), AS AMENDED, MAY RECEIVE UP TO 12 SPECIAL
10 PERMITS A YEAR TO SELL BEER AND TABLE WINE. A CHAMBER OF COMMERCE MAY NOT USE ONE OF ITS SPECIAL PERMITS
11 FOR AN EVENT CONDUCTED BY A BUSINESS LEAGUE AND A BUSINESS LEAGUE MAY NOT USE ONE OF ITS PERMITS FOR AN
12 EVENT CONDUCTED BY A CHAMBER OF COMMERCE. THE CHAMBER OF COMMERCE OR BUSINESS LEAGUE RECEIVING A
13 SPECIAL PERMIT MUST OBTAIN LIQUOR LIABILITY INSURANCE FOR ANY EVENT IT CONDUCTS.

14 (d)(E) The beer and wine sold under this subsection (1) must be consumed at the time when and within
15 the enclosure where the special event, activity, or sporting contest is held.

16 (b)(e)(F) The An application of the association or corporation for a special permit must be presented 3
17 days in advance, but the department may, for good cause, waive the 3-day requirement. and The application
18 must describe the location of the enclosure where the special event, activity, or sporting contest is to be held,
19 the nature of the special event, activity, or sporting contest, and the period during which it is contemplated that
20 the special event, activity, or sporting contest will be held. An application for a permit for professional sporting
21 contests or junior hockey contests under subsection (1)(c) must provide the inclusive dates of the season of play
22 for the sporting contest. The application must be accompanied by the amount of the permit fee and a written
23 statement of approval of the premises where the special event, activity, or sporting contest is to be held issued
24 by the local law enforcement agency that has jurisdiction over the premises where the event is to be held.

25 (c) The permit issued to the association or corporation is a special permit but does not authorize the
26 sale of beer and table wine except starting 1 day before the regular period when events are being held upon the
27 grounds, during the period described in the application, and for 1 day after the period described in the
28 application.

29 (d)(f)(G) A special permit issued under this subsection (1) for the purpose of selling and serving beer
30 at an a special event, activity, or sporting contest conducted on the premises of a county fairground or public

1 sports arena authorizes the permitholder to sell and serve beer in the grandstand and bleacher area of the
2 premises, as well as from a booth, stand, or other fixed place on the premises.

3 ~~(e)(g)(H)~~ For the purposes of this subsection (1), a post of a nationally chartered veterans' organization
4 or a lodge of a recognized national fraternal organization otherwise licensed under this code is an ~~association~~
5 ~~entitled to~~ organization that may receive special permits for three special events a year, as described in
6 subsection (1)(a), to sell beer and table wine. All net proceeds must go to the post or lodge acquiring the special
7 permit.

8 (2) (a) A post of a nationally chartered veterans' organization or a lodge of a recognized national
9 fraternal organization not otherwise licensed under this code ~~is, in the discretion of the department~~ may receive,
10 without notice or hearing as provided in 16-4-207, ~~entitled to~~ a special permit to sell beer and table wine or a
11 special permit to sell all alcoholic beverages at the post or lodge to members and their guests only, to be
12 consumed within the hall or building of the post or lodge.

13 (b) The application of a nationally chartered veterans' organization or lodge of a recognized national
14 fraternal organization must describe the location of the hall or building where the special permit will be used and
15 the date it will be used.

16 (c) The special permit may be issued for a 24-hour period only, ending at 2 a.m., and the department
17 may not issue more than 12 special permits to any post or lodge during a calendar year."
18

19 **Section 5.** Section 16-4-501, MCA, is amended to read:

20 **"16-4-501. License and permit fees.** (1) Each beer licensee licensed to sell either beer or table wine
21 only, or both beer and table wine, under the provisions of this code, shall pay a license fee. Unless otherwise
22 specified in this section, the fee is an annual fee and is imposed as follows:

23 (a) (i) each brewer and each beer importer, wherever located, whose product is sold or offered for sale
24 within the state, \$500;

25 (ii) for each storage depot, \$400;

26 (b) (i) each beer wholesaler, \$400; each domestic winery producing more than 25,000 gallons of wine,
27 \$400; each domestic winery producing 25,000 gallons or less of wine, \$200; each table wine distributor, \$400;

28 (ii) for each subwarehouse, \$400;

29 (c) each beer retailer, \$200;

30 (d) (i) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer

1 license;

2 (ii) for a license to sell table wine at retail for off-premises consumption only, either alone or in
3 conjunction with beer, \$200;

4 (e) any unit of a nationally chartered veterans' organization, \$50.

5 (2) The permit fee under 16-4-301(1) is computed at the following rate:

6 (a) of \$10 a day for each day that beer and table wine are sold at events, activities, or sporting contests,
7 other than those applied for pursuant to 16-4-301(1)(c) those events lasting 2 or more days, but the fee may not
8 exceed \$300 for a series of scheduled sporting events; and

9 (b) \$200 \$1,000 a season for professional sporting contests or junior hockey contests held under the
10 provisions of 16-4-301(1)(c).

11 (3) The permit fee under 16-4-301(2) is \$10 for the sale of beer and table wine only or \$20 for the sale
12 of all alcoholic beverages.

13 (4) Passenger carrier licenses must be issued upon payment by the applicant of an annual license fee
14 in the sum of \$300.

15 (5) The annual license fee for a license to sell wine on the premises, when issued as an amendment
16 to a beer-only license pursuant to 16-4-105, is \$200.

17 (6) The annual renewal fee for:

18 (a) a brewer producing 20,000 or fewer barrels of beer, as defined in 16-1-406, is \$200; and

19 (b) resort retail all-beverages licenses within a given resort area is \$2,000 for each license.

20 (7) Each licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:

21 (a) except as provided in this section, for each license outside of incorporated cities and incorporated
22 towns or in incorporated cities and incorporated towns with a population of less than 2,000, \$250 for a unit of
23 a nationally chartered veterans' organization and \$400 for all other licensees;

24 (b) except as provided in this section, for each license in incorporated cities with a population of more
25 than 2,000 and less than 5,000 or within a distance of 5 miles, measured in a straight line from the nearest
26 entrance of the premises to be licensed to the nearest boundary of the city, \$350 for a unit of a nationally
27 chartered veterans' organization and \$500 for all other licensees;

28 (c) except as provided in this section, for each license in incorporated cities with a population of more
29 than 5,000 and less than 10,000 or within a distance of 5 miles, measured in a straight line from the nearest
30 entrance of the premises to be licensed to the nearest boundary of the city, \$500 for a unit of a nationally

1 chartered veterans' organization and \$650 for all other licensees;

2 (d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5
3 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest
4 boundary of the city, \$650 for a unit of a nationally chartered veterans' organization and \$800 for all other
5 licensees;

6 (e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns
7 is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary
8 of the city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the
9 corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the
10 license fee chargeable by the larger incorporated city or incorporated town applies and must be paid by the
11 applicant. When the premises of the applicant to be licensed are situated within an incorporated town or
12 incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license
13 fee chargeable by the smaller incorporated town or incorporated city applies and must be paid by the applicant.

14 (f) an applicant for the issuance of an original license to be located in areas described in subsections
15 (6) and (7)(d) shall provide an irrevocable letter of credit from a financial institution that guarantees that
16 applicant's ability to pay a \$20,000 license fee. A successful applicant shall pay a one-time original license fee
17 of \$20,000 for a license issued. The one-time license fee of \$20,000 may not apply to any transfer or renewal
18 of a license issued prior to July 1, 1974. All licenses, however, are subject to the specified annual renewal fees.

19 (8) The fee for one all-beverages license to a public airport is \$800. This license is nontransferable.

20 (9) The annual fee for a special beer and table wine license for a nonprofit arts organization under
21 16-4-303 is \$250.

22 (10) The license fees provided in this section are exclusive of and in addition to other license fees
23 chargeable in Montana for the sale of alcoholic beverages.

24 (11) In addition to other license fees, the department of revenue may require a licensee to pay a late fee
25 of 33 1/3% of any license fee delinquent on July 1 of the renewal year or 1 year after the licensee's anniversary
26 date, 66 2/3% of any license fee delinquent on August 1 of the renewal year or 1 year and 1 month after the
27 licensee's anniversary date, and 100% of any license fee delinquent on September 1 of the renewal year or 1
28 year and 2 months after the licensee's anniversary date.

29 (12) All license and permit fees collected under this section must be deposited as provided in 16-2-108."
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